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8 [Proposed] Lead Counsel for Plaintiff and Class

9 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

10 DANIEL CHECKMAN, Individually	)	No. 2:18-cv-03417-JFW-AS
11 And On Behalf Of All Others	)	
12 Similarly Situated,	)	<b>MEMORANDUM OF POINTS</b>
13 Plaintiff,	)	<b>AND AUTHORITIES IN</b>
14 v.	)	<b>SUPPORT OF MOTION OF</b>
15	)	<b>CHARLES BRENDON FOR</b>
16 ALLEGIANT TRAVEL COMPANY,	)	<b>APPOINTMENT AS LEAD</b>
17 MAURICE J. GALLAGHER, JR., and	)	<b>PLAINTIFF AND APPROVAL</b>
18 SCOTT SHELDON,	)	<b>OF CHOICE OF COUNSEL</b>
19 Defendants.	)	<u>CLASS ACTION</u>
20	)	Judge: Hon. John F. Walter
21	)	Hearing Date: July 23, 2018
22	)	Time: 1:30 p.m.
23	)	CTRM: 7A – First Street
24	)	Courthouse
25	)	
26	)	

**MEMORANDUM OF POINTS AND AUTHORITIES**

Charles Brendon (“Movant”) respectfully submits this memorandum in support of his motion for an Order, pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”):

(1) appointing Movant as Lead Plaintiff for all persons other than Defendants who purchased or otherwise acquired the securities of Allegiant Travel Company (“Allegiant” or the “Company”) between June 8, 2015 and April 13, 2018, inclusive (the “Class Period”), to recover damages caused by Defendants’ violations of the federal securities laws (the “Class”); and

(2) appointing The Rosen Law Firm, P.A. as Lead Counsel for the Class.

**I. PERTINENT BACKGROUND**

On April 24, 2018, Plaintiff Checkman commenced this against the Company and certain of its officers, and directors, for violations of Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder. That same day, The Rosen Law Firm, P.A. issued a PSLRA early notice advising potential class members of, among other things, the claims alleged in this case, the Class Period, and the 60-day deadline for class members to move this Court to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

According to the lawsuit, Defendants throughout the Class Period made false and/or misleading statements and/or failed to disclose that: (1) Allegiant lacked adequate systems to ensure its aircraft were being properly maintained; (2) consequently, Allegiant was not operating responsibly and ethically, and providing safe working conditions for its employees; and (3) as a result,

Defendants' public statements were materially false and misleading at all relevant times.

On April 13, 2018, CBS News announced it would air a 60 Minutes segment on Sunday, April 15 2018, criticizing the Company's safety and maintenance record. On this news, shares of Allegiant fell \$14.20 per share or over 8.59% to close at \$151.05 per share on April 13, 2018, damaging investors.

On April 15, 2018, CBS News aired a 60 Minutes report revealing that: (i) Allegiant aircraft had a high number of serious mechanical incidents from mid-2015 through October 2017; (ii) Allegiant lacks the infrastructure and personnel to adequately maintain their aircraft; and (iii) Allegiant has discouraged pilots from reporting safety and maintenance issues. On this news, shares of Allegiant fell \$4.65 per share or over 3% to close at \$146.40 per share on April 16, 2018, further damaging investors.

## ARGUMENT

### II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF

The PSLRA sets forth procedures for the selection of Lead Plaintiff in class actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA directs courts to consider any motion to serve as Lead Plaintiff filed by class members in response to a published notice of class action by the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B)(i) and (ii).

The PSLRA provides a "rebuttable presumption" that the most "adequate plaintiff" to serve as Lead Plaintiff is the "person or group of persons" that:

(aa) has either filed the complaint or made a motion in response to a notice . . . ;

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

As set forth below, Movant satisfies the above criteria, has the largest financial interest of any movant in this litigation, and is therefore the most adequate plaintiff and should be appointed as Lead Plaintiff.

**A. Movant Is Willing to Serve as Class Representative**

Movant has made a timely motion in response to a PSLRA early notice. *See* Rosen Decl., Ex. 1. Additionally, as set forth in his PSLRA certification, Movant attests that he has reviewed the complaint, adopts the allegations therein, and is willing to serve as representative of the class. *See* Rosen Decl., Ex. 2. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the class.

**B. Movant Has the Largest Financial Interest in the Action**

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff . . . is the person or group . . . that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 730. While the PSLRA does not specify precisely how to calculate the “largest financial interest”, the movant’s approximate losses in the subject securities is the best measure. *Richardson v. TVIA*, 2007 WL 1129344 at \* 4 (N.D. Cal. Apr. 16, 2007) (citing cases).

Movant lost \$25,980.75 on his purchases of Allegiant securities during the Class Period. *See* Rosen Decl., Ex. 3 (Movant’s Loss Chart). Movant is not aware of any other movant that has suffered greater losses in Allegiant securities during the Class Period. Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the class.

1  
2 **C. Movant Satisfies the Requirements of Rule 23 of the Federal**  
3 **Rules of Civil Procedure**

4 The PSLRA further provides that, in addition to possessing the largest  
5 financial interest in the outcome of the litigation, the Lead Plaintiff must  
6 “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil  
7 Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Federal Rule of Civil  
8 Procedure Rule 23(a) provides that a party may serve as a class representative if  
9 the following four requirements are satisfied:

- 10 (1) the class is so numerous that joinder of all members is  
11 impracticable,  
12 (2) there are questions of law or fact common to the class,  
13 (3) the claims or defenses of the representative parties are typical of  
14 the claims or defenses of the class, and  
15 (4) the representative parties will fairly and adequately protect the  
16 interests of the class.

17 Fed. R. Civ. P. 23(a).

18 In making its determination that a movant satisfies the requirements of  
19 Rule 23, the Court need not raise its inquiry to the level required in ruling on a  
20 motion for class certification – a *prima facie* showing that Movant satisfies the  
21 requirements of Rule 23 is sufficient. *Cavanaugh*, 306 F.3d at 730-31. At the lead  
22 plaintiff stage, “[t]he typicality and adequacy requirements of Rule 23 are the  
23 main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are  
24 deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007  
25 WL 1129344, at \* 4 (citing *Cavanaugh*, 306 F.3d at 730)).

26 Movant fulfills all of the pertinent requirements of Rule 23. Movant shares  
27 substantially similar questions of law and fact with the members of the class, and  
28

his claims are typical of the members of the class. Movant and all members of the class allege that Defendants violated the Exchange Act by publicly disseminating false and misleading statements about Allegiant and its business. Movant, as did all of the members of the class, purchased Company securities at prices artificially inflated due to Defendants' misrepresentations and omissions, and was damaged thereby. These shared claims also satisfy the requirement that the claims of the representative party be typical of the claims of the class.

Thus, the close alignment of interests between Movant and other class members, as well as Movant's desire to prosecute this action on behalf of the class, provides ample reason to appoint Movant as Lead Plaintiff.

**D. Movant Will Fairly and Adequately Represent the Interests of the Class and Is Not Subject to Unique Defenses**

The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only upon proof "by a purported member of the plaintiffs' class" that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interest of the class;

or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Movant's ability and desire to fairly and adequately represent the class has been discussed above. Movant is not aware of any unique defenses that Defendants could raise against his that would render Movant inadequate to represent the Class. Accordingly, the Court should appoint Movant as Lead Plaintiff for the Class.

### 1 **III. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED**

2 The PSLRA vests authority in the Lead Plaintiff to select and retain lead  
3 counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The  
4 Court should only interfere with the Lead Plaintiff’s selection when necessary “to  
5 protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

6 Movant has selected The Rosen Law Firm, P.A. as Lead Counsel. The firm  
7 has been actively researching the class’ and Movant’s claims – reviewing publicly  
8 available financial and other documents and gathering information in support of  
9 the claims against the Defendants. Furthermore, the firm is experienced in the  
10 area of securities litigation and class actions. The firm has prosecuted securities  
11 fraud class actions and other complex litigations and has obtained substantial  
12 recoveries on behalf of investors. *See* Resume of The Rosen Law Firm, P.A.,  
13 Rosen Decl., Ex. 4.

14 As a result of the firm’s experience in litigation involving issues similar to  
15 those raised in this action, Movant’s counsel has the skill and knowledge that will  
16 enable the firm to prosecute this action effectively and expeditiously. Thus, the  
17 Court may be assured that by approving Movant’s selection of Lead Counsel, the  
18 members of the class will receive the best legal representation available.

### 19 **IV. CONCLUSION**

20 For the foregoing reasons, Movant respectfully requests that the Court  
21 issue an Order: (1) appointing Movant as Lead Plaintiff of the class; (2)  
22 approving The Rosen Law Firm, P.A. as Lead Counsel; and (3) granting such  
23 other relief as the Court may deem to be just and proper.

1 Dated: June 25, 2018

Respectfully submitted,

2 **THE ROSEN LAW FIRM, P.A.**

3 /s/ Laurence M. Rosen

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10 [Proposed] Lead Counsel for Plaintiff and  
11 Class



**CERTIFICATE OF SERVICE**

I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:  
I am the managing attorney of The Rosen Law Firm, P.A., with offices at 355 South Grand Avenue, Suite 2450, Los Angeles, CA 90071. I am over the age of eighteen.

On June 25, 2018, I electronically filed the following **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF CHARLES BRENDON FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CHOICE OF COUNSEL** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on June 25, 2018

/s/ Laurence M. Rosen  
Laurence M. Rosen